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NOV 18 2004

In re Application of:

Brian Doyle

Serial No.: 09/516,653

Filed: March 01, 2000

Attorney Docket No.: **P8123**

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed on June 14, 2004. The petition has been treated as a petition under 37 C.F.R. § 1.181, to withdraw the holding of abandonment of the above-identified application. No fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a response to the Office action mailed on November 06, 2003. A Notice of Abandonment was mailed on May 27, 2004.

Petitioner asserts that on February 03, 2004, a response including an amendment was filed. To support this assertion, petitioner has submitted a copy of the response bearing a certificate of mailing dated February 03, 2004, and a copy of a return postcard receipt, which acknowledges receipt in the USPTO of an amendment on February 06, 2004.

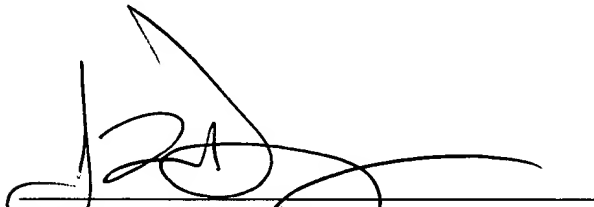
A review of the application file record reveals that the above-identified response having been acknowledged as being received in the PTO on February 06, 2004, is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states, "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely received in the PTO but lost somewhere after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The copy of the response submitted with the supplement to the petition on June 14, 2004, is accepted since the response originally submitted was apparently lost.

The application file is being forwarded to the examiner of record for consideration of the response and prompt appropriate action.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (571) 272-1594.



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